

**UNAPPROVED MINUTES
CITY OF MILPITAS**

Minutes:	Regular Meeting of Milpitas City Council (Including Joint Meeting with Redevelopment Agency)
Date of Meeting:	February 17, 2004
Time of Meeting:	6:00 p.m. (Closed Session) 7:00 p.m. (Regular Session)
Place of Meeting:	City Hall Council Chambers, 455 E. Calaveras Blvd.

ROLL CALL

Mayor Esteves called to order the regular meeting of the Milpitas City Council at 6:00 p.m. Present were Mayor Esteves, Vice Mayor Dixon (arrived 6:01 p.m.), and Councilmembers Gomez and Polanski. Councilmember Livengood arrived at 6:30 p.m.

CLOSED SESSION

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the following four items listed on the agenda:

1. **CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**
(Pursuant to Government Code Section 54956.9[a])
Title: Milpitas v. Turner Construction et al.
Santa Clara County Superior Court Case No. CV008400
2. **CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**
(Pursuant to Government Code Section 54956.9[a])
Title: Milpitas v. Sobek
Santa Clara County Superior Court Case No. CV816141
3. **CONFERENCE WITH REAL PROPERTY NEGOTIATOR**
(Pursuant to Government Code Section 54956.8)
Property: APN Nos. 86-12-015, 86-12-016, and 86-12-020. 112 N. Main Street
Negotiating Party: Milpitas Redevelopment Agency
Under Negotiation: Terms and Conditions for Acquisition of Property
4. **CONFERENCE WITH REAL PROPERTY NEGOTIATOR**
(Pursuant to Government Code Section 54956.8)
Property: APN Nos. 28-24-015, 28-24-014, 28-24-020, and 28-24-026. 130, 110, and 94 Winsor
Negotiating Party: Milpitas Redevelopment Agency
Under Negotiation: Terms and Conditions for Acquisition of Property

Mayor Esteves adjourned the meeting to closed session at 6:01 p.m.

The City Council meeting reconvened at 7:03 p.m. with Mayor Esteves presiding and Vice Mayor Dixon and Councilmembers Gomez and Polanski present. Councilmember Livengood left the meeting.

**CLOSED SESSION
ANNOUNCEMENTS**

Mayor Esteves announced that for items 1, 2, and 4 on the Closed Session agenda, staff had been given direction and there were no announcements; for item 3, the City Attorney would make an announcement. City Attorney Steve Mattas reported with respect to item 3, the Abel property, the Council authorized staff to make an offer to purchase on a 4/1 vote, with Councilmember Livengood voting no. Mr. Mattas emphasized that the only authority given was to make the offer.

Mayor Esteves announced that Councilmember Livengood received an emergency call and had to leave.

PLEDGE

Members of Troop No. 92 led the Council and audience in the Pledge of Allegiance.

MINUTES

MOTION to approve the City Council minutes of February 3, 2004, including joint meeting with the Redevelopment Agency, as submitted.

M/S: Gomez, Polanski

Ayes: 4

Absent: 1 (Livengood)

SCHEDULE

Councilmember Polanski announced the Community Advisory Commission would be holding a special meeting tomorrow evening, February 18, at 7:00 p.m. in the Committee Room, to meet with Dr. Shanks, the ethics consultant retained by the City, and the public was invited to attend.

MOTION to approve the Schedule of Meetings as amended.

M/S: Gomez, Polanski.

Ayes: 4

Absent: 1 (Livengood)

PRESENTATIONS

Mayor Esteves said this was a very special night because the Council was honoring City employees with the Gene Schwab Award. Mayor Esteves recognized Gene's brother Harold, and his wife, Louise, who attended the Rotary luncheon presentation of the Award, and recognized the nominees who were present in the audience. Mayor Esteves read the proclamation recognizing Lechi Nguyen as the recipient of the Gene Schwab Memorial "Service Above Self" Award and presented it to Ms. Nguyen, thanking her for her services and stating that the City was proud of her.

Ms. Nguyen thanked everyone for coming to show support of her; stated many seniors advised her they wished to come to the meeting, but because of their age, she told them to stay home and watch TV instead but that she appreciated their thoughts; it was truly an honor to receive the Gene Schwab Award; expressed her sincere gratitude to everyone she worked with that helped her complete her job successfully; she tried to form a network system in order to bring the benefits effectively to seniors; and wanted to send a message to the residents that the City and County really cared about senior benefit priorities. Ms. Nguyen was presented with many bouquets of flowers from members of the Senior Center.

Celia Salazar, President of the Rotary Club, presented Ms. Nguyen with the Service Above Self plaque on behalf of the Milpitas Rotary Club and presented the Mayor and Ms. Nguyen with the perpetual plaque that would be displayed at City Hall. Mayor Esteves invited Supervisor McHugh to the podium. Supervisor Pete McHugh said as a member of the Milpitas Rotary, he knew Gene Schwab and worked with him, and as a representative of Santa Clara County, he was pleased to express appreciation to Ms. Nguyen for her service to the people of Milpitas.

CITIZENS FORUM

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks, including any visual or technology-assisted presentations of any kind, be limited to two minutes or less, and noted that the City Clerk would be using the timer and when the red light at the podium came on, two minutes would be up.

Mr. Swanson commented on the wonders of the place value system.

Rekha, on behalf of the Art of Living Foundation, invited everyone to a Concert for World Peace on March 7, 5-7 pm, at the Community Center.

William Connor said Milpitas is beautiful, he wanted to keep it that way, and suggested that the City keep it that way by purchasing the property in the Town Center where 65 housing units and a Safeway were proposed to be built.

Isaac Hughes commented he hoped that if a City newsletter was approved, it wouldn't contain advertisements; only wanted to see what was necessary for the citizens to enjoy the services provided by the City; and requested information on how many of the Milpitas History Books had been sold.

ANNOUNCEMENTS

Councilmember Polanski reminded everyone to vote on March 2, 2004, and to consider voting "yes" on Measure B for the library; reported she attended the DARE Graduation at Spangler on January 22 and at Curtner on January 27 and the officers did an excellent job; she had received inquiries as to when a public hearing would be held regarding ideas for honoring Dr. Martin Luther King, Jr. and Cesar Chavez and hoped that it would be noticed, especially for Commissioners as to when that date would be for the subcommittee to solicit public input.

Vice Mayor Dixon reported she, Recreation Services Manager Bonnie Greiner, and Ms. Greiner's staff had the opportunity to meet with Milpitas Unified School District trustees and staff to hear and participate in the interviews with the four selected Child Education Specialists; the Council had given direction to look into a pilot program for pre-kindergarten; a final report would be coming to the Council and the School Board but the next step would be to take it to the City/School Communication meeting. Vice Mayor Dixon further reported on February 5, the VTA Board met formally and listened to public input as to whether the Board should vote to forge ahead with the preliminary engineering studies for BART to Santa Clara County; after much discussion, the vote was 10/2 in favor of going ahead with those preliminary studies; and thanked Milpitas High School's Rosemary Keith and her staff and volunteers for a very successful Milpitas High School Academy auction and dinner on February 6.

Mayor Esteves said he was happy to attend the VTA Board meeting to advocate for the BART preliminary engineering studies and congratulated the VTA Board for making a great decision. Mayor Esteves congratulated Cub Scouts from Troop 92 who just received their Arrow of Light at the recent Blue and Gold Dinner.

Councilmember Gomez said he wanted to update everyone on the Martin Luther King /Cesar Chavez Recognition Subcommittee he and Councilmember Livengood were recently appointed to stating that they were in the process of asking people to be a part of that subcommittee, and anyone interested should email or call him.

AGENDA

MOTION to approve the agenda as submitted.

M/S: Gomez, Polanski. Ayes: 4 Absent: 1 (Livengood)

CONSENT CALENDAR

Mayor Esteves inquired if anyone wished to make any changes to the Consent Calendar. A member of the audience said it was his understanding that item 9 would be removed. City Manager Thomas Wilson requested item 9 (Grant Award Berryessa Creek Trail, Reach 3) be removed. Councilmember Polanski asked that item 3 (Sister Cities MOU) be removed.

MOTION to approve the Consent Calendar, items with asterisks on the agenda, as amended by the removal of items 3 and 9, in accordance with the staff recommendations.

M/S: Gomez, Polanski. Ayes: 4 Absent: 1 (Livengood)

*1. Appointment

Approved the Mayor's appointment to the Parks, Recreation, and Cultural Resources Commission of Kathryn Gray to the Alternate No. 2 position with a term expiring June 2004, and moving the following:

- * Henry Ku from Alternate No. 1 to fill the vacancy created by the resignation of Zeya Mohsin, for a term expiring June 2006
- * Judi Leonard from Alternate No. 2 to Alternate No. 1, with a term expiring June 2005

*6. Youth Sports Grant

Approved one Organizational Youth Sports Assistance grant in the amount of \$730.00 to Southpawprep as recommended by the Parks, Recreation and Cultural Resources Commission, leaving a balance of \$1,320.00 for the remainder of the Fiscal Year.

*7. Marquee Request

Denied Felipe and Vitalina Cardenas' request to use the Marquee to advertise a family event.

- *10.**
237/I-880 (Project No. 4170)
Dixon/I-880 (Project No. 4047)
Tasman/I-880 (Project No. 4039)
- Authorized the City Manager to execute the agreement amendment with BKF Engineers for the completion of necessary coordination services for right-of-way transfers to Caltrans and the Valley Transportation Authority for the 237/I-880 Interchange (Project No. 4170); Dixon/I-880 Interchange (Project No. 4047), and Tasman/I-880 (Project No. 4039) in the amount of \$20,000.00, subject to approval as to form by the City Attorney.
- *11.**
Mobile Computing Equipment
- Authorized the City Manager to execute a purchase order in an amount not to exceed \$149,731.52 for Mobile Computing Hardware and Equipment from Data911 Systems for the Fire Department.
- *12.**
Public Safety Base Station
Radio Equipment
- Awarded the bid for the purchase of replacement Public Safety Base Station Radio Equipment to the lowest bidder, Day Wireless Systems, in the amount of \$68,966.40 including tax and shipping.
- *13.**
File Servers
(Project No. 8109)
- Awarded the bid for the purchase of eight replacement file servers (Project No. 8109) to Surah, Inc. as the lowest bidder in the amount of \$42,295.44 and authorized the purchase.
- *14.**
Piedmont Road Bike Lane
(Project No. 4214)
- Awarded the contract to Grade Tech, Inc. for the Piedmont Road Bike Lane and Sidewalk improvements at St. John's Cemetery (Project No. 4214) in the amount of \$308,838.20, subject to approval by the City Attorney.
- *15.**
Miscellaneous Vendors
- Approve the following purchase requests:
1. \$111,797.00 to Santa Clara County Crime Laboratory for the City's share of annual costs of submitting physical evidence for analysis to the Major Case Unit for the Police Department. The City's share is 7.01% of the Crime Laboratory's annual operating costs. (Funds are available from the Police Department operating budget for these required services.)
 2. \$13,000.00 to Day Wireless Systems for the removal of two-way radio, emergency lights, partitions and other equipment from out of service patrol cars and reinstalling in five newly purchased patrol cars for the Fleet Maintenance Division. (Funds are available from the Public Works Department operating budget for this service.)

PUBLIC HEARINGS (NONE)

JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

- RA1.**
CALL TO ORDER
- Mayor Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 7:40 p.m.
- RA2.**
ROLL CALL
- Present were Mayor Esteves, Vice Mayor Dixon, and Agency/Councilmembers Gomez and Polanski. Agency/Councilmember Livengood was absent.
- RA3.**
MINUTES
- MOTION to approve the Redevelopment Agency minutes of February 3, 2004, including joint meeting with the City Council, as submitted.
- M/S: Gomez, Polanski. Ayes: 4 Absent: 1 (Livengood)
- RA4.**
AGENDA
- MOTION to approve the Agenda and Consent Calendar as submitted.
- M/S: Polanski, Gomez. Ayes: 4 Absent: 1 (Livengood)
- RA5.**
LIBRARY BUILDING
- Assistant City Engineer Greg Armendariz reported that the building program for the Library project was being brought forward tonight and was the result of a significant amount of work

PROGRAM/COST PLAN

by the Library Subcommittee, various staff members as well as community input received through the process, expressed appreciation to the consultant team Cynthia Ripley and Martin Gordon who were present, and thanked the members of the County Library system, noting that Melinda Cervantes, Linda Arbaugh, and Sara Flowers were present in the audience. Mr. Armendariz introduced Mark Rogge who would make the presentation.

Capital Improvement Program Manager Mark Rogge outlined his presentation stating that it would cover the needs assessment, the site location, the building size and layout, the cost plan, and would conclude with the recommendations previously approved by the Subcommittee that were before the Council tonight.

Mr. Rogge reviewed highlights of the needs assessment noting that 70 percent of residents visit the library each year, it is the most visited public building in Milpitas, and is the busiest in the County Library system with approximately 2,200 patrons/day. Mr. Rogge commented on the deficiencies of the existing library designed for 100,000 volumes but currently has over 230,000 volumes. Mr. Rogge reported the Library Building Program transformed the Needs Assessment into a Building Program incorporating the services desired by the community, how best to configure the area to serve the needs of the community, and serve a high volume of traffic for many years. Mr. Rogge described the proposed site location in the MidTown area and the proposal to build a two-story 60,000 sq. ft. building that includes restoration of the existing building and new building construction that would seamlessly incorporate the existing building while preserving and honoring its historic character.

Mr. Rogge reviewed the Cost Plan that had been prepared without the benefit of plans and specifications. Mr. Rogge further reviewed the funding for the Library and Senior Center buildings, MidTown parking, and street improvements that totaled \$88.6 million. Mr. Rogge reported the Cost Plan for the Library Building totaled \$39 million, related costs (land acquisition and soil contingency, MidTown parking garage, utility undergrounding and relocation, street improvements and streetscape near the Library, and relocation of the Public Works Corporation Yard) totaled \$24 million, for a grand total Library and related MidTown Project costs of \$63 million. Mr. Rogge reviewed the recommendation to approve the Library Building Program, note receipt and file the associated projected Cost Plan, and direct staff to proceed with the design architecture selection process.

Mayor Esteves, as the Chair of the Library Subcommittee, said he would like to comment on three things: (1) the building would be considered a green building and environmentally very favorable; (2) the building library program would be a fulfillment of the needs assessment study which was the result of community input on requirements and needs; and (3) the Cost Plan was just a beginning plan and not a final figure. Mayor Esteves emphasized that this was just the beginning of the whole process.

Vice Mayor Dixon said it was *deja vu* but she agreed with everything; when the \$24 million was used as a page holder for this particular building, that was not the set budget; when you take into account the trouble encountered with this building, \$34.8 million was really a bargain; and no cost ever remains the same and every year will bring increases because we are living in this valley. Vice Mayor Dixon asked for clarification that the \$63 million didn't include the parking structure. City Manager Thomas Wilson responded that the \$39 million included the library and the \$24 million included the parking structure and the other items allocated to the project. Mr. Wilson explained the other items that were earlier allocated to this project were the TOT and the Library Capital Project Reserve; those items were designated prior to the Redevelopment reorganization. Vice Mayor Dixon inquired if the \$5 million she recalled from two years ago was not Redevelopment money. Mr. Wilson responded it came out of the General Fund capital reserves and at the time it was allocated to the project, the Redevelopment Agency had not been amended and bonds had not been sold; the Vice Mayor's comment that this program does not need to utilize those dollars was correct; staff wanted to make sure the full funding menu was presented to the Council and as this project proceeds, the Council will be asked to make and designate and dedicate funding

specifically to the project. Mr. Wilson explained there were two parts to the funding; \$80 million was available from the RDA and \$5 million from the General Fund capital reserve.

Vice Mayor Dixon said that with respect to the comments about a green building, she hoped that everything learned with the City Hall building would put the library building ahead of the game. Mr. Armendariz responded that all the lessons learned with City Hall would be applied to the library.

Vice Mayor Dixon questioned if the parking garage would only be two levels. Mr. Armendariz said it would be three levels, however, the parking garage in relation to the historic building would be slightly less in height. Vice Mayor Dixon expressed two concerns, that the structure would allow an additional level in the future if needed and, unlike the parking structure at the Great Mall, that it be built to code and will accommodate emergency vehicles. Vice Mayor Dixon commented that she thought this project was almost ahead of the game since there already was a very competent team under the leadership of the City Manager and thanked the Mayor, who had never missed a Subcommittee meeting, for his work. Vice Mayor Dixon also expressed appreciation to Greg Armendariz and Mark Rogge for coming up with the idea to switch the locations of the Senior Center and the Library.

Councilmember Polanski said she wanted to make it clear that the Library was something the community needed and wanted but Redevelopment funds could not help take care of the maintenance and operation of the building; she hoped the Council would be getting recommendations of other funding sources, such as the TOT, for the long term.

Councilmember Gomez asked for clarification of the staffing level and that the design of the building would be such that it wouldn't need many employees. Mr. Armendariz explained that the building would be designed with openness and a good line of sight recognizing that the Library system doesn't have the ability to fund additional personnel at this time. City Manager Wilson added that the assessment of the ultimate staffing will have to occur at the time the final design is made; the City may want to supplement the staffing; staff was also proposing to come to the Council with a funding plan for operation and maintenance beyond the level the JPA can.

Mayor Esteves said he was very excited about this project for the City and inquired about the next step in the process. Mr. Rogge responded staff would be bringing the RFP to the Subcommittee and beginning the process to select an architect; after approval by the Subcommittee, the contract would be brought to the Council for approval.

Mayor Esteves invited comments from the audience.

Ed Connor said one of the best libraries in the area was in San Francisco and was six stories with the entire building inside done with glass. Mr. Connor said he was not in favor of building the Library in this location because of the problems with the City Hall building costing \$10 million in extra costs for the cement under the building, and suggested there could be cost overruns.

MOTION to:

1. Approve the Milpitas Library Building Program;
2. Note, receipt and file the associated projected Cost Plan; and
3. Direct staff to proceed with the Design Architecture Selection Process.

M/S: Dixon, Gomez.

Ayes: 4

Absent: 1 (Livengood)

City Manager Wilson introduced Cynthia Ripley and Martin Gordon, present in the audience, and thanked them for their excellent work. Mayor Esteves recognized Library staff members who were in the audience and who had been a great part of the program.

***RA6.
INITIAL ACCEPTANCE
CITY HALL**

Adopted Resolution No. 7384 granting initial acceptance, subject to a one-year warranty period and reducing the faithful performance bond to \$42,795.90.

***RA7.
CONSULTANT SERVICES
PUBLIC IMPROVEMENT
DESIGN AGREEMENT
KB HOMES**

1. Authorized the City Manager to enter into the agreement with Swinerton Management in the amount not-to-exceed \$469,000, subject to approval as to form by the City Attorney; and
2. Authorized the City Manager to enter into an agreement with KB Homes to finance the management and design of the streetscape improvements for Abel Street between Corning and Great Mall Parkway.

**RA8.
ADJOURNMENT**

There being no further Redevelopment Agency business, Mayor Esteves adjourned the Redevelopment Agency meeting at 8:41 p.m.

The City Council meeting continued.

REPORTS OF OFFICERS & BOARDS

**2.
City Newsletter**

City Manager Wilson reported this item was brought forward by Vice Mayor Dixon and was a proposal to establish a City newsletter for distribution to Milpitas residents such as many communities throughout the country use. Vice Mayor Dixon said she was asking the Council to consider publishing a City newsletter and passed out samples of other city newsletters, commenting that she particularly liked the format of the City of Folsom newsletter that she felt was very effective. Vice Mayor Dixon said she was proposing no advertising or personal ads in the newsletter, the Folsom newsletter used a three, four, or eight page full color format and was sent out bi-monthly, which she thought was quite ambitious. Vice Mayor Dixon proposed looking at publishing a newsletter four times a year to provide an opportunity for the City to put the good news out to the community and, hopefully, open up the door for more participation from the community. Vice Mayor Dixon suggested that the School District might be highlighted, this would be a way of putting the sound bites out that this is a great community, and would be a way to make the community feel more engaged, particularly right now because there are so many new residents.

Councilmember Gomez inquired if there was any potential for cost avoidance by eliminating any other things currently being sent out. Vice Mayor Dixon mentioned the Milpitas Connection that focused primarily on recreation programs; however, the newsletter would focus on whatever it was wanted to focus on. Councilmember Gomez said he was wondering what this could take the place of that money was already being spent on.

Vice Mayor Dixon commented that a few years ago, former Mayor Manayan asked the Council to approve \$11,000 for an ad in the Silicon Valley Business Inc. Magazine and while she voted for it at the time, she felt it did nothing for the residents that live in this city; this would be the first time a newsletter was put out and the cost could be shared with the Redevelopment Agency.

Assistant City Manager Blair King suggested one mailing sent out each year advertised the street sweeping schedule and was something that might be included in a newsletter. City Manager Wilson added that there were some annual mandated mailings that might also be included.

Mayor Esteves said he thought it would provide two-way information from the City, it might include surveys, could be used to recruit members for commissions, and it would be a very effective communication tool.

Councilmember Polanski said she agreed communication was a wonderful tool and a newsletter had been used very effectively by the School District to help the community understand what is going on. Councilmember Polanski further stated that we have been

celebrating what a great city we are and what great employees we have; when you look around us, other cities are laying off people and closing fire stations; sometimes we forget to let the public know how good we are doing and how staff has worked so hard to do so many cost savings; and this type of newsletter would allow us to keep the public informed about the library and senior center projects, street sweeping schedules, and would be an excellent tool to use to communicate to the community the good things being done. Councilmember Polanski said she thought it was an excellent idea and being able to share with the Redevelopment Agency was a very cost effective way to get information out.

MOTION to direct staff to go forward with the design and implementation of a four-color Milpitas newsletter to go out at least quarterly.

M/S: Dixon, Polanski.

Councilmember Polanski inquired how many pages. City Manager Wilson suggested authorizing 12 pages although 12 pages probably wouldn't be utilized every edition. Vice Mayor Dixon said different times of the year would dictate how much was done. City Manager Wilson said if 12 pages were authorized, that would give staff the ability to publish up to the 12 pages. Vice Mayor Dixon amended the motion to include up to 12 pages. Mayor Esteves inquired about the name of the newsletter. Vice Mayor Dixon said it would be called the "City of Milpitas Newsletter." Councilmember Polanski, the second to the motion, agreed with the additions.

VOTE ON MOTION to authorize a 12 page, four-color, City of Milpitas Newsletter:

Ayes: 4 Absent: 1 (Livengood)

City Manager Wilson said staff would bring back a budget allocation and service agreement for the Council's approval. Councilmember Gomez said since this would be coming back, he would like potential cost avoidance items identified.

**3.
Renew Sister City Relationship
Tsukuba City, Japan**

Public Information Specialist Leslie Stobbe introduced Sister Cities Commission Chair Debra Garcia stating that Ms. Garcia and five other Commission members were present in support of an extended sister city relationship with Tsukuba City, Japan through 2008. Chair Garcia introduced Sister Cities Commissioners Echo Arthur, Arlyn Swiger, Satnam Chahal, Linda Downey, and Roselda Mateo and reported that Tsukuba City merged with Milpitas' former sister city, Kukizaki, Japan last November. Ms. Garcia further reported that Milpitas previously had a seven year relationship with Kukizaki and at the time of the merger, Kukizaki had become part of Tsukuba City; a Memorandum of Understanding (MOU) had previously been drafted, which the Council approved on consent and sent to Tsukuba City for its approval; the recommended Memorandum of Understanding before the Council represented the changes that Tsukuba City made for cultural reasons to the MOU previously seen by the Council.

Councilmember Polanski called attention to item 5(A) in the recommended MOU that stated "the host city must bear the expenses for sight-seeing, domestic transportation to and from the airport, hotels, and planned activities during group activities" and expressed concern that if someone was not paying that close attention, Milpitas would be expected to pay for any expenses incurred to go to an event such as Great America. Ms. Garcia responded that had concerned her as well; the intent was (after several emails had gone back and forth between Tsukuba City and Milpitas) that it would be just the one event, similar to the barbecue Milpitas had previously hosted; rather than an outdoor type barbecue, Tsukuba City had done an indoor type event that was very similar. Ms. Garcia said the intent was that it be a similar type of hosted event for all of the participating members and the participants would cover the costs of any additional sightseeing; Tsukuba City had asked that Milpitas cover the costs of transporting the people from Tsukuba City from the airport to Milpitas and back, as they had done in the past for visiting students and adults from Milpitas.

Councilmember Polanski said when she read item 5(A), she didn't feel it was as clear as the staff report on what Milpitas was going to pay for. Ms. Garcia said she understood that and explained how the wording came about through a number of emails back and forth and through a number of translations. Ms. Garcia also pointed out that before each visit, the Commission goes through a process of approving every activity and bringing it to the Council for approval and would continue to do that for any future visits. Ms. Garcia said the Mayor of Tsukuba City sent back a copy of the MOU, which he had already signed, and while she understood Councilmember Polanski's concerns, she felt the intent was that it be just one City event. Councilmember Polanski said she understood the timing and difficulties and thought the cultural exchange was wonderful; however, she also felt that the MOU should be clear and if the intent was to host one event, then that was what it should state. Ms. Stobbe suggested that since Milpitas had three original copies signed by Mayor Fujisawa, one original signed copy could be returned to Tsukuba City with a cover letter from Mayor Esteves explaining Milpitas' understanding. Councilmember Polanski said that would be helpful for her but didn't know how the other members of the Council felt.

Mayor Esteves inquired about the budget of \$2,600. Ms. Garcia explained that was based on the cost of the most recent barbecue hosted by Milpitas two years ago, with an increase of 10% over the cost of what was a guesstimate and a cost of \$900 for the transportation to and from the airport for 12 people. Mayor Esteves asked if it was basically the budget for one event the City would host. Ms. Stobbe responded it included the cost of a Class B vehicle to transport people and luggage as well as a 10% increase in the estimated cost for the Friendship Party; it was a high-end estimate of what the Commission would bring to the Council to request funding when the Tsukuba City delegation comes to Milpitas.

Mayor Esteves asked if one visit a year for every sister city was expected. Ms. Stobbe responded yes adding that the Milpitas delegation would go to Tsukuba City and Tsukuba City would come to Milpitas once every year through 2008, and that was how it had been for the last seven years. Mayor Esteves inquired if the Commission was expecting to extend this kind of arrangement with the other sister cities. Ms. Garcia responded at this time, Dagupan, Philippines did not include a student visit; there was in the works a presentation for Huizhou City, China, and that MOU would include a student visit. Ms. Garcia explained that in working on the MOU with Dagupan City, it was pointed out that Milpitas did not have any budget. Mayor Esteves expressed concern that there was no parity and the relationships with sister cities weren't equitable. Mayor Esteves said when he visited Dagupan City, they shouldered all hotel charges, all their food, transportation to and from hotels, and all sightseeing. Ms. Garcia said there was some discussion going on now about a visit from Dagupan City coming up in the near future and Councilmember Livengood had volunteered on his own time to help recruit and get help from the business community to help fund events for any of the housing for future sister city events. Mayor Esteves said he didn't mind the source of the funds so long as there was a sense of equality.

Councilmember Polanski said it was her understanding (before she was on the Council), that when the Sister Cities Commission was formed and the sister city relationships were started, there was going to be a foundation or some organization that was going to be separate and would provide the funding as these relationships developed. Ms. Garcia said that was true, there was in the works a separate organization, there were two members right now who volunteered to be part of it because they did not want the Sister Cities Commission Members to be on the Board of that organization, so they were looking for a third so that organization could file for non-profit status and then take over the fund-raising. Councilmember Polanski said she thought there was going to be a point where, even with Tsukuba City or when it was Kukizaki, that there were going to be ways, through this non-profit or somehow else, to cover these costs because she thought we were trying to get away from the City spending money except for the Mayor presenting a gift. Ms. Garcia said that had been discussed a number of times at Commission meetings and Councilmember Livengood said that he did not feel it was appropriate for the Commission members to be doing that type of fund raising and he suggested that the Commission come to the Council and ask for the funds at this time while at

District Maintenance Department that many of the District's playing fields and artificial field turf and track surfaces had been damaged by certain recreational activities. Mr. Mattas further explained that the ordinance would authorize the District to post signs outlining rules and

the same time recruiting members from the community to try to start up an organization to do just that.

Councilmember Polanski said from her own standpoint as one City Councilperson, the best group to raise the funds for a non-profit would be those who are members of the Sister Cities

regulations for facility use and provided that violations of the posted regulations may be punishable as an infraction.

Vice Mayor Dixon noted that the District's Maintenance Director was in the audience and may like to comment. Vice Mayor Dixon commented that because Milpitas has the best fields within the region, people are coming into Milpitas using the fields for things like field hockey.

Keith Walker, MUSD Maintenance Director, commented that this was another example of the School District and the City working together, it would provide the police with what they need for enforcement, they want the public to have use of the fields but to use them properly, and he appreciated what the City was doing. Vice Mayor Dixon thanked Mr. Walker for bringing this to her attention.

Police Chief Charles Lawson said he was pleased with the ordinance, which would provide some teeth for enforcement.

Councilmember Polanski said she liked how the ordinance was being put forth in a broad sense so it could be used for other things that could come up in the future. Councilmember Polanski inquired if the Council moved forward with this, how soon could the District proceed with the signage. City Attorney Mattas responded if the ordinance was introduced this evening, it could be adopted in two weeks (at the next Council) meeting and would go into effect 30 days after adoption (total time of about six weeks).

Mayor Esteves inquired about the fines. Mr. Mattas responded \$100 for the first violation, \$200 for the second violation, and \$500 for the third and subsequent violation.

City Attorney Mattas read the title of Ordinance No. 261 adding a new Chapter 18 to Title V of the Milpitas Municipal Code to authorize enforcement of posted use regulations at designated public sites and facilities.

MOTION to waive the reading beyond the title and introduce Ordinance No. 261.

M/S: Polanski, Dixon.

Ayes: 4

Absent: 1 (Livengood)

RESOLUTIONS

9. Accept Grant Award Award Contract Berryessa Creek Trail

Capital Improvement Program Manager Mark Rogge reported this item was on a previous agenda; however, a bid protest was received and the item was continued; during that time staff met with both of the contractors; staff sent out a letter to the second low bidder (Grade Tech) informing them that staff did not find any reason to disqualify the low bidder; late today staff received a letter from Grade Tech and their attorney; staff did not find any additional information in that letter that would change the staff recommendation; and representatives of Grade Tech were in the audience and wished to speak.

City Attorney Steve Mattas stated that Grade Tech had submitted further correspondence at approximately 2:30 p.m. this afternoon; staff reviewed the material and did not believe the information provided constituted a basis for modifying the staff and City Attorney recommendation, which was to go forward with the award to the original contract recipients; and if the Grade Tech representative wished to speak, the Council may wish to let them speak now.

Matt Troughton, an attorney with the law firm Coudert Brothers, representing Grade Tech, Inc., said with him tonight was Eric Remson, from Grade Tech, Inc.; part of the package Mr. Mattas referred to was a declaration under oath by Mr. Remson putting together the correspondence and bid material that Grade Tech had access to and which formed the basis for the protest; the fundamental question before the Council tonight was whether a federally funded project where the City of Milpitas was accepting federal dollars and agreeing in exchange for those dollars to apply and enforce a Disadvantaged Business Enterprise outreach

program, whether the City would truly honor its commitments to the federal government and do that. Mr. Troughton further stated the apparent low bidder, Bugler Construction, had submitted a document as part of its bid package that said they had complied with the federal outreach goal for Disadvantaged Business Enterprises (DBE) and had met and surpassed the 14% goal set by the City, and in fact had achieved 16.2% DBE participation in the project; the problem was that they did not reach the goal; at best, they reached 11.2% of the goal; it came down to Bugler Construction over counting the dollars attributable to various subcontractors they proposed to use on the contract, including their trucking vendor; the invitation for bids propagated by the City expressly stated that if supplies are being bought from a subcontractor, every dollar of the supplies did not count towards the goal, only 60% could be counted; and making just that one adjustment to Bugler Construction's bid, they fell below the goal to underneath 14%, down around 13.2%.

Eric Ramson, Grade Tech Secretary/Treasurer, stated he was the person who had bid the job and was used to dealing with DBE participation and contracts; he went through and reviewed the information and felt Bugler presented absolutely no good faith effort at all; if Bugler did not meet the goal and did not meet the good faith effort, the bid should be thrown out; he did not think it would stand up under anybody else looking it over from a federal standpoint. Mr. Ramson pointed out that the City had in its own specs 23 pages of how to obey all these different guidelines, he did not understand if they didn't meet the goal and they didn't make the good faith documentation, how they could be awarded the project. Mr. Ramson said that was why he got an attorney involved, he had attended a meeting and shared his position and no one had told him he was incorrect in his interpretation.

City Attorney Steve Mattas said the Council should understand that the documents before the Council this evening included the staff report, the backup data that actually addresses the review the City staff did and his office did with regard to the compliance by Bugler with the DBE requirements; the Council should also be aware that the City did retain independent services with 4 Leaf, who reviewed the DBE requirements as well and also concluded that they've met the requirements as set forth in both the federal regulations and the City's bid application process. Mr. Mattas further stated the Council should also be aware that the requirements, although stated in the letter from the gentlemen from Coudert Brothers as being mandatory in all instances were not, in fact, mandatory – some of the language in the documents related to what they should do as opposed to what they shall do; of particular relevance to the Council's consideration tonight was that the data supplied to show good faith effort listed eight different criteria that a bidder should do if they're showing good faith when they can't meet the DBE goal; and, the data was provided by Bugler, both as part of their DBE compliance and after they were identified as being the apparent low bidder in the action. Mr. Mattas went on to explain how the review was made and how it was determined Bugler's average participation, in terms of DBE, was comparable to the average participation of all the other bidders. Mr. Mattas said he wanted to be real clear that it was not that they've complied with the 14 but that they have complied with the good faith effort requirements which were set forth under DBE regulations. Mr. Mattas stated it was still his opinion that it was appropriate for the Council to take the actions that have been recommended in the staff report this evening.

Mayor Esteves said the explanation was clear to him and he didn't have a problem with the staff recommendations.

Councilmember Polanski said she had confidence in our staff and the opinion of our Attorney and appreciated people coming down and taking the time, but she was comfortable with moving staff recommendations as listed to adopt the resolution, approve a budget appropriation, reject the bid protest, and waive minor irregularities – the four items.

City Attorney Mattas recommend that the Council take up the items one at a time.

MOTION to adopt Resolution No. 7385 demonstrating acceptance of the grant award from the Santa Clara Valley Water District.

M/S: Polanski, Dixon. Ayes: 4 Absent: 1 (Livengood)

MOTION to approve a budget appropriation of \$90,000.

M/S: Polanski, Dixon. Ayes: 4 Absent: 1 (Livengood)

MOTION to reject the bid protest received from the second low bidder, Grade Tech, Inc.

M/S: Polanski, Dixon. Ayes: 4 Absent: 1 (Livengood)

MOTION to waive minor irregularities in the bidder's documentation and award the construction contract for Berryessa Creek Trail, Reach 3 (Project No. 5074) to the lowest responsive bidder, Bugler Construction, in the amount of \$534,700.

M/S: Polanski, Dixon. Ayes: 4 Absent: 1 (Livengood)

ADJOURNMENT

There being no further Council business, Mayor Esteves adjourned the City Council meeting at 10:17 p.m.

Gail Blalock, CMC
City Clerk